

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TIMOTHY G. O'HAYER,

Petitioner,

v.

VINCENTE M. RUIZ,

Respondent.

CASE NO. C15-5797 RBL

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

The Court, having reviewed the Report and Recommendation of Magistrate Judge J. Richard Creatura, objections to the Report and Recommendation, if any, and the remaining record, does hereby find and **ORDER:**

(1) The Court adopts the Report and Recommendation.

(2) The Court finds that petitioner failed to show that the state appellate courts' adjudication of grounds 1 (sub-part 2); 3 (sub-part 2), 6 and 9 was contrary to, or an unreasonable application of, clearly established federal law and are dismissed.

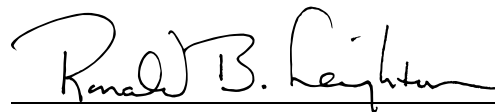
(3) Petitioner failed to fairly present grounds 1 (sub-part 1), 2, 3 (sub-part 1), 4, 5, 7, 8, 10, 11 and 12 under federal law by invoking one complete round of Washington state court

1 appellate review and therefore, has not exhausted his state remedies as to these grounds for
2 relief. Furthermore, petitioner's grounds 1 (sub-part 1), 2, 3 (sub-part 1), 4, 5, 7, 8, 10, 11 and 12
3 are time-barred under Washington law and petitioner does not demonstrate cause and prejudice
4 or a fundamental miscarriage of justice; therefore, grounds 1 (sub-part 1), 2, 3 (sub-part 1), 4, 5,
5 7, 8, 10, 11 and 12 are procedurally barred. Accordingly, grounds 1 (sub-part 1); 2; 3 (sub-part
6 1), 4, 5, 7, 8, 10, 11 and 12 are unexhausted and procedurally barred.

7 (4) The Court denies the issuance of a certificate of appealability.

8 (4) Petitioner's motion to appoint counsel (Dkt. 11) is denied as moot.

9 **DATED** this 14th day of March, 2016.
10

11 
12

13 Ronald B. Leighton
14 United States District Judge
15
16
17
18
19
20
21
22
23
24